PUBLIC PROSECUTOR

v.

ABDULLAH AMBEK

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED DZAIDDIN J
[CRIMINAL TRIAL NO. 13 OF 1983]
31 OCTOBER 1983

CRIMINAL LAW AND PROCEDURE: *Charge of perjury - Whether defective - Custodial sentence.*

The charge against the accused was that he had committed perjury, an offence punishable under s. 193 of the Penal Code, in the course of the trial of Datuk Mokhtar bin Hashim with three others, in the case of the Federal Territory, Criminal Trial No. 9 of 1982. The accused had further committed the offence in his statement to the police *vide* Gemencheh Report 325/82. The accused had given statements to the police which were contradicted during his evidence at the trial.

The defence counsel submitted that the charge framed in the alternative was bad for duplicity and therefore defective and that the statement was not in question and answer form as required by s. 112 of the Criminal Procedure Code.

The accused in his evidence testified that he had given the statement whilst under police pressure and what he stated in evidence was the whole truth.

Held:

[1] The charge as framed was correct and not defective and that s. 112 of the Criminal Procedure Code has been complied with.

[2] The prosecution had established a *prima facie* case against the accused which the accused has been unable to rebut.

[3] Evidence that the accused had been under police pressure while giving his statement and that his testimony during the trial was the truth is not a valid defence to perjury. It may have a bearing on the question of sentence but not on the question of guilt.

[4] The making of false statement is a serious offence that in the public interest warrants a custodial sentence instead of a fine.

[Accused sentenced to 1 year's imprisonment.]

Cases referred to:
Ramamoorthy v. PP [1948] 14 MLJ 43
PP v. Subramaniam & Anor. [1956] MLJ 58
Public Prosecutor v. Nagalinga Reddy [1959] AIR AP 250

Legislation referred to:
Criminal Procedure Code, s. 112
Penal Code, s. 193

Other sources referred to:
Ratanlall's Law of Crimes
Gour's Penal Law of India Vol. II 9th Edn. p. 1569

For the public prosecutor - Lamin bin Hj. Mohd. Yunus; Solicitor-General
For the accused - Jagjit Singh; M/s. Jagjit Singh & Co.; Manjeet Singh Dhillon; M/s. Lawrence, Dhillon & Associates; Abu Zahar bin Ujang; M/s. Abu Hashim, Zahar & Partners; Tuan Hj. Abdul Mutalib b. Datuk Seri Abdul Razak; M/s. Mutalib & Bakarudin

JUDGMENT

Mohamed Dzaiddin J:

The accused is charged for perjury, an offence punishable under s. 193 of the Penal Code. Section 193 states that whoever intentionally gives false evidence in any stage of a judicial proceeding shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

The amended charge against the accused reads as follows:

> That you on the 10 December 1982 in the High Court, at Kuala Lumpur in the Federal Territory, in the course of the trial of Datuk Mokhtar bin Hashim with three others in the case of the Federal Territory Criminal Trial No. 9 of 1982 before the Judge in the said High Court stated in evidence as underlined in such parts of your evidence attached herewith marked Lampiran 'A' and on the 21 June 1982 at Pudu Police Station, Kuala Lumpur in the Federal Territory, in the course of police investigation vide Gemencheh Report 325/82 did make the statement as underlined in such parts of your statement attached herewith marked Lampiran 'B' to Encik Abd. Manaf bin Hj. Naim one of which i.e. either Lampiran 'A' or 'B' in respect of those parts underlined which statement you either knew or believed to be false or did not believe to be true and that you thereby committed an offence punishable under section 193 of the Penal Code.

The case arose out of a statement which the accused made on 21 June 1982 at Balai Polis Pudu to Superintendent Abd. Manaf bin Haji Naim (PW3) in the course of police investigation into the murder of Dato Taha bin Talib, which statement was recorded by PW3 under s. 112 of the Criminal Procedure Code. The accused subsequently became a witness for the prosecution in the trial of Datuk Mokhtar bin Hashim and three others charged with the murder of Dato Taha (vide Federal Territory Criminal Trial No. 9 of 1982) at this High Court. On 10th December 1982, the accused gave evidence, which the prosecution alleges, were materially contradictory to the statements made by him to PW3.

Mr. Manjeet Singh, one of the Counsel for the accused, had submitted that the framing of the charge in the alternative was bad for duplicity and, therefore, defective. He said that the charge as framed was not consistent with the specimen charge as found in **Ratanlall's Law of Crimes** and in our C.P.C. Second Schedule XXVII (Form No. 4) at page 227. These forms mentioned about evidence given in the course of the trial, whereas in the present charge it mentioned about the statement made in the course of police investigation and evidence at the main trial.

In my judgment, the charge as framed in the present case is correct and not defective. In *Ramamoorthy v. PP* [1948] 14 MLJ 43 at 45, Willan CJ said at page 45:

> There is thus a common relation between the preliminary enquiry and the charge. But there is also common relation, possibly on the wider basis, between a preliminary enquiry and the particular police investigation immediately preceding that preliminary enquiry. Therefore, a statement made during such investigation and evidence given at the preliminary enquiry formed a 'series of acts' as required by s. 166 of the Criminal Procedure Code, and thus can be the subject of an alternative charge if such statement and such evidence are contradictory.

See also illustration (b) to s. 166 of the Criminal Procedure Code. Thus, in this case where the accused made two contradictory statements, he may be charged in the alternative although it cannot be proved which of these two statements was false.

Mr. Manjeet Singh had also submitted that the statement Exhibit P. 5 was not done in question and answer form and had therefore not complied with s. 112 of the C.P.C. In my judgment, this section lays down that a person is bound to answer truly all questions put to him, but it is not essential that the statement should be recorded in the forms of questions and answers. In *PP v. Subramaniam & Anor*. [1956] MLJ 58, it was held that before an accused can be guilty under s. 193 of the Penal Code, it is necessary that it should be shown by evidence that the statement which is set out in the form was a statement in answer to a question put by the investigating officer to the accused. The evidence to show that that statement was a statement in answer to the question put by the officer need not be evidence appearing on the statement itself; oral evidence may be adduced to show that a statement was recorded in answer to the question. In the present case, I accepted PW3's evidence that such statement was recorded by him in answer to his questions. In the circumstances, I am satisfied that the provision of s. 112 of the C.P.C. had been complied.

To sustain a conviction under s. 193 of the Penal Code, the prosecution has to prove beyond reasonable doubt the following ingredients:

(1) that the accused was legally bound to state the truth, either an oath or by an express provision of law;

(2) that he made such statement;

(3) that such statement was made in a stage of a judicial proceeding;

(4) that a statement was false;

(5) that he either knew or believed it to be false or did not believe it to be true;

(6) that he did so intentionally.

I should also add that in the present case this Court should be fully satisfied the two statements are not only contradictory but are from every point of view irreconcilable.

From the evidence of PW2, PW3 and PW4, there are ample evidence for me to come to my finding that ingredients (1), (2) and (3) have been proved. With regard to the material contradictions of the two statements, I have to consider the underlined parts of accused's evidence in Court as in Lampiran 'A' (the record of proceeding was produced and marked as Exhibit P.4A) and his statement to PW3 as in Lampiran 'B' (Exhibit P.5) of the charge. In Lampiran 'A', there are ten underlined portions relating to events at various dates and times within the personal knowledge of the accused. In his evidence at the trial of Datuk Mokhtar and three others on 10 December 1982, the accused stated as underlined the following:

(1) In 1980 election for Ketua Bahagian Tampin, the candidates were Datuk Mokhtar and Dato Taha. Datuk Taha lost the election and, after that, the relationship between the deceased and Datuk Mokhtar was normal.

(2) In 1978, the relationship between them was good as both are in same party. Their personal relationship was observed also to be good.

(3) The following day after **5 April 1982** in the evening, he went to Bangunan UMNO Tampin to collect the daftar undi. He met the secretary, Ahmad Ramlan, whose room was near Datuk Mokhtar's. He spoke to Datuk Mokhtar and told him not to do anything since the objective was to win the election and they should work together.

(4) On **8 April 1982** at about 9.00 p.m., there was a meeting held at the house of Encik Said, the political secretary to Datuk Mokhtar, to discuss the Gemencheh election. His house was back-to-back to Datuk Mokhtar's. There were 20 to 30 people. Among those present were himself, Ujung Ajak, Aziz Abdullah, Rahmat Satiman, Yunus Ariffin, Yusof Sidik, Harun Ahmad and a few others. The meeting ended at 10.00 p.m. The meeting was about how to face the Gemencheh election and what to do to show as a lesson to the party leaders who chose a person not nominated by the division. After the meeting, they left for home. He did not know where second accused went.

(5) At about 10.00 p.m. on same date, he met Datuk Mokhtar after meeting ended. He was sure that Nordin Johan, Rahmat Satiman, Aziz Abdullah and him did not meet at Datuk Mokhtar's house; and the question of Dato Taha was not discussed.

(6) On **11 April 1982,** he attended a wedding from 9.00 a.m. to 5.00 p.m. He did not go to Datuk Mokhtar's house at all that day. He did not meet either Nordin Johan or Rahmat Satiman. There was no meeting and no discussion.

(7) On **13 April 1982,** he did not meet Nordin. He met Datuk Mokhtar at Masjid Gedok at 10.00 p.m. Datuk Mokhtar came to Masjid to attend a ceramah at Bilik Gerakan. The meeting ended about 11.00 p.m. After that ceramah and light drinks, Datuk Mokhtar went to Jalong. He returned home. On reaching home, he asked his wife to go to Gemencheh to meet his cousin. He arrived at Gemencheh while T.V. show was still on.

(8) On **13 April 1982** at about 8.00 p.m. after Magrib prayer in his house, he went to Masjid because of ceramah on the election. Ceramah was held after Isyak prayer. He was in the mosque between 8.00 p.m. to 11.00 p.m. He did not see Nordin Johan and Rahmat Satiman. Aziz Abdullah was one of the speakers.

(9) Apart from going to the mosque and his cousin's house, he did not go anywhere else on **13 April 1982.**

(10) After going to his cousin's house, he returned home roughly at 12.30 a.m. After returning home, he did not go anywhere else. He did not meet Dato Taha at any time on 13 April 1982. Neither on **14 April 1982.**

In his statement to PW3 in Exhibit P5, the accused stated as underlined that the position of Dato Taha from 1956 until 1972 was not threatened. However, after 1974 general election, their relationship appeared to be breaking up, especially in 1978 general election when Dato Taha operated from the operation room of UMNO Tampin while Datuk Mokhtar conducted his campaign from Tampin Rest House. The climax of this enmity and rivalry was seen in the general meeting of UMNO Bahagian Tampin in 1980 where Dato Taha lost the post of Ketua Bahagian to Datuk Mokhtar who polled 172 votes against Dato Taha's 95 votes. From time to time, there were criticism and allegations made against each other.

The accused also stated on 6 April 1982 at about 5.30 p.m., he went to UMNO headquarters building at Tampin and met Datuk Mokhtar. Among other things, Datuk Mokhtar told him that Dato Rais Yatim wanted him to include Dato Taha's name in the list of candidates by the divisional committee, but he disagreed.

On 8 April 1982 at about 9.00 p.m., the accused attended a meeting in the rented house of Datuk Mokhtar at Taman Clonlee attended by about twenty people including Nordin bin Johan, Rahmat bin Satiman and Aziz bin Abdullah. After the meeting, Nordin Johan told him not to go anywhere as they had something else to discuss. After the meeting, Nordin Johan,

Rahmat Satiman, Aziz Abdullah and himself remained in the house together with Datuk Mokhtar. Then, Nordin Johan started the discussion where he stated that he had plans to topple Dato Taha in the election by giving support to DAP. There were also other plans to topple Datuk Taha. When accused asked whether this included the killing of Dato Taha, Nordin Johan replied that, if necessary, this step would have to be taken. They all agreed that the plan would be executed on 13 April 1982 and they agreed to hold another meeting at 11.00 p.m. on 11 April 1982 to finalise the plan to kill Dato Taha.

On **11 April 1982,** the accused stated that he attended a wedding reception during the day and left for Datuk Mokhtar's house at 11.00 p.m. While at Datuk Mokhtar's house, they discussed the plan to murder Dato Taha.

On **13 April 1992** at about 8.00 p.m., Nordin Johan came to accused's house in his motorcar Mercedes registration No. WN 76. From there, accused accompanied him to Dato Taha's house. They stopped in front of Balai Raya Kampong Seri Asahan. Accused got down and walked into the compound of Dato Taha's house. It was about 8.30 p.m. There, he met Sudin, the father-in-law of Dato Taha. Accused told Sudin that he wanted to see Dato Taha, but Sudin replied that he was out. Sudin told accused that Dato Taha had gone to Bukit Rokan. He then went back to Nordin's car and both of them went to Masjid Gedok where there was a ceramah. Accused stated that he returned at about 11.00 p.m. At about 10 minutes after that, Nordin came to fetch him and together with Aziz Tumpok, Datuk Mokhtar Hashim, Aziz PJK, they proceeded to Batang Rokan. Nordin Johan was the driver.

At about 12.30 a.m. on **14 April 1982,** Nordin Johan drove his car from Batang Rokan towards Kampong Seri Asahan. On the way, they saw Dato Taha's car. They followed the car and proceeded to his house.

After the murder had taken place, they got back into the car and proceeded towards Tampin. They arrived at Bahau at about 2.00 a.m. on **14 April 1982.** They were at his house for about half an hour. Accused left for Gedok. It was then about 3.00 a.m.

It is the duty of this Court to see whether the statements can be reconciled or not. Having considered the events as appearing in the underlined parts in Lampiran 'A' and Lampiran 'B', there is no doubt in my mind there exist material contradictions between the two statements. I find as a fact that the statements describing the events are irreconcilable with each other. It is also my finding of fact that these statements contradict in every particular with one another.

Now, with regard to ingredient (4) that the statement was false, I have merely to compare the two statements, which I have found as a fact that they are irreconcilable and contradictory. It follows, therefore, that both statements cannot possibly be true or that one of them must necessarily be false.

Then, has the prosecution proved that the accused when making such statements knew or believed it to be false or did not believe it to be true? In my opinion, since the prosecution has proved that the two statements are so materially contradictory that both cannot possibly be true or that one must be necessarily false, the inference here is that the accused when making the statements should necessarily have known or have knowledge of its falsity.

Lastly, has the prosecution proved intention? It is settled law that there can be no offence under Section 193 if a statement, though false, was made without an intention to make it. Intention may be inferred from other facts. **Gour's Penal Law of India,** Volume II, 9th Edition, at page 1569 says that if the statement was false and known by the accused to be false, it

may be presumed that the accused gave false evidence intentionally. The materiality of the statement is also important in determining the question of intention. It becomes important as reflecting upon the question of intention upon which the question of criminality depends. In the present case, the question asked is: what was the motive for the accused to give false evidence. The answer would certainly be a good proof of intention. In my judgment, from the surrounding circumstances in which these two statements were made, I find that the prosecution has proved intention.

Therefore, having considered the whole of the prosecution evidence, in particular the two statements in Lampiran 'A' and Lampiran 'B', the irreconcilable nature of the portions underlined and the circumstances in which the two statements were made or given by the accused, it is my finding that the prosecution has established a *prima facie* case against the accused, if unrebutted, would warrant a conviction.

When defence was called, the accused elected to give evidence on oath. He admitted that he gave a statement to PW3 at Balai Police Pudu on 21 June 1982 from 9.00 p.m. until 7.00 a.m. the next morning. At the time of the recording of this statement, he had already been under intensive and extensive interrogation by Inspector Abdullah and his team of interrogators. He testified that from the day he was arrested on 3 May 1982, he was detained at various places, i.e. at Alor Gajah, Jalan Bandar and Pudu Police Stations. While at Pudu Police Station, the pressure began to increase; and after about two weeks' stay, the statement, Exhibit P5, was recorded. The accused denied the truth of the contents in P5. However, he said that some parts in P5 were given by him to PW3, but denied strongly any knowledge of the underlined parts. His reasons were that after constant questioning by PW3, the answers, which were formulated by DSP Bashir, were forced down his throat and made it appear that they were his own statement. ASP Azmi typed the answers. Again, because of intensive interrogation, he stated he was not conscious of what he was saying at the material time. He could not think properly and he was unfit as his legs were swollen.

It is to be noted that when the underlined portions of P5 were read by the accused and questions were asked by his Counsel and the Solicitor General relating to the events mentioned therein, the accused denied wholly making such statement. However, as for the parts which were not underlined but formed the events in P5, the accused admitted under cross-examination that he did make such statement to PW3. Based on these answers and having seen and observed the demeanour of the accused throughout his testimony, I have formed the impression that he was not speaking the truth. In answering questions on the underlined portions of P5, he was always quick to qualify himself by stating repeatedly that he was not a rational person (because of intensive and extensive interrogation) when he gave the statement to PW3. He cannot in one breath say that he was irrational when he made the statement, but rational or conscious when he gave the other unaffected parts of his statements in P5, because after all this statement was given in one stretch from 9.00 p.m. to 7.00 a.m. In this respect, I entirely agree with the submission of the learned Solicitor General that at the time of recording the statement in P5, the accused was conscious and was fully aware of the statement which he made.

On the question of the admissibility of P5, I am of the opinion that it is not relevant for the purpose of determining the guilt of the accused in this case. It might have been true that the accused was under police pressure when he gave the statement P5. But, that is not the issue before me. What is in issue is whether he did make the statement on 21 April 1982 falsely that he either knew or believed it to be false or did not believe it to be true.

I have also considered the accused's evidence on 10 December 1982 as appearing in Lampiran 'A'. In his evidence before me, the accused reiterated that whatever he said on 10 December was the whole truth. In addition, he called eight alibi witnesses who testified that the accused was seen at Masjid Gedok on 13 April 1982 between 8.30 p.m. until after 11.00 p.m. Thereafter, he returned home until the next morning. In my opinion, the alibi evidence are not relevant in the present case because the charge against the accused is for making two statements which are so contradictory to and irreconcilable with each other, that both cannot possibly be true. The evidence that the statement in Lampiran 'A' is true becomes relevant only if the accused is charged for making that statement falsely. Then, it is for the prosecution to prove that it is false and not the other statement and, in rebuttal, the accused can show that the statement in Lampiran 'A' is true. Hence, in that situation, alibi evidence becomes relevant.

In my judgment, the accused's defence that the statement in P5 was given by him under police pressure and what he stated in evidence on 10 December 1982 was the whole truth is not a valid defence because both have no relevancy in the present case. Such considerations as pointed out in **Gour** (*supra*) at page 1573 "may have a bearing on the question of sentence but not on the question of guilt". See also *Public Prosecutor v. Nagalinga Reddy* [1959] AIR AP 250.

Looking at the defence case as a whole, I have asked myself if it was possible that the first statement may have been false through any error or mistake which has been corrected by the second statement and that the later statement on 10 December 1982 contradicts the first because, as the accused claims, contains the truth which had come to his knowledge when he lodged a police report at Seremban on 9 October 1982 (Exhibit D.14). In such a situation, the two statements, although contradictory, may not "intentionally" be so and therefore there is no offence under s. 193. Unfortunately, I find that the accused had not raised any reasonable doubt in the prosecution case. In such circumstances, I find the accused guilty as charged.

On sentence, I have heard the mitigating factors on behalf of the accused. I have therefore taken into consideration the following factors:

(1) age of the accused;

(2) that he has just retired from Government service;

(3) in view of the conviction and sentence, the accused would be deprived of his pension and gratuity for his service in the public service;

(4) that he is a first offender;

(5) that the circumstances in which the statement he had made to Superintendent Abdul Manaf on 21 June 1982 at Pudu Police Station would, in the circumstances of this case, mitigate the sentence.

On the other hand, I have also considered that making false statement is serious offence and that public interest warrants a custodial sentences instead of a fine. In fact, there have been cases where fines were imposed for an offence under s. 193. However, I shall be failing in my duty if I were merely to sentence the accused to just a day's imprisonment and a fine. There fore, having taken into consideration the extenuating circumstances mentioned above, I sentence the accused to one year's imprisonment effective from today.

Also found at [1984] 1 CLJ 189